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TABLE OF CASES CITED

CONSTITUTION AND STATUTES

MISCELLANEOUS

Supreme Court of the United States

OCTOBER TERM, 1953

No. 188

UNITED CONSTRUCTION WORKERS, affiliated with the UNITED MINE WORKERS OF AMERICA; DISTRICT 50, UNITED MINE WORKERS OF AMERICA, and UNITED MINE WORKERS OF AMERICA,

Petitioners,

v.

LABURNUM CONSTRUCTION CORPORATION.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINA[1]

PETITIONERS' BRIEF

I.

OPINION BELOW

The opinion of the Virginia Supreme Court is reported in 194 Va. 872, and in 75 S.E. 2d 694. It also appears in the printed record at pages 1945 et seq.[2]

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[1] Herein sometimes referred to as "Virginia Supreme Court" or "Virginia Appellate Court".

[2] Herein the abbreviation "R". refers to the printed record. A stipulation has been filed regarding the printed record in this case (R. 1981-1982).

II.

JURISDICTION

The Virginia Supreme Court's judgment was entered on April 20, 1953 (R. 1973). Petition for writ of certiorari was filed in this Court on July 18, 1953. Jurisdiction of this Court is invoked under 28 U.S.C., section 1257(3). This Court granted certiorari on January 18, 1954 (R. 1983), — U. S. —, 98 L. ed. (Adv. op., p. 236).

III.

QUESTION PRESENTED

In its order granting certiorari, this Court limited the review herein to the following question:

> "In view of the type of conduct found by the Supreme Court of Appeals of Virginia to have been carried out by Petitioners, does the National Labor Relations Board have exclusive jurisdiction over the subject matter so as to preclude the State court from hearing and determining the issues in a common law tort action based upon this conduct."[3]

IV.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent constitutional provisions involved consist of the commerce clause of Article I, Section 8 of the Constitution of the United States. The pertinent statutory provisions involved are Section 1, Section 101 amending Sections 1, 2, 3, 7, 8, subsection (b)(1)(A), 10, subsections (a), (b), (c), (e), (f), (j), (l), and 14(b) of the National Labor Relations Act, and Sections 202(c), 203(b), 301, 303

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[3] The Court's order granting the writ of certiorari likewise provided:

"The Government is invited to submit a memorandum setting forth the policy of the National Labor Relations Board in regard to: (1) the proviso in Sec. 10(a), 61 Stat. 146, 29 U.S.C. (Supp. 111) Sec. 160(a), and (2) other cases apart from those in Sec. 10(a), in which the Board declines to exercise its statutory jurisdiction. The memorandum should indicate by what standards the Board declines to act and whether the standards are applied by rule or regulation or on a case by case method."

and 501, all of the Labor Management Relations Act, 1947. These constitutional and statutory provisions are set forth in Appendix A hereto.

V.

STATEMENT

By notice of motion for judgment, Laburnum Construction Corporation (herein called "Laburnum") instituted against petitioners, United Construction Workers, affiliated with the United Mine Workers of America, District 50, United Mine Workers of America, and United Mine Workers of America (herein sometimes called "UCW", "District 50" and "UMWA", respectively) in the Circuit Court of the City of Richmond, Virginia (herein called "trial court") a tort action for recovery of compensatory and punitive damages of $500,000.00 (R. 2-19). Petitioners filed pleas of not guilty (R. 19) and grounds of defense, denying the material allegations of the notice (R. 74-81, 102-104); in a jury trial petitioners were found "jointly and severally liable" and damages were assessed at $275,437.19, representing $175,437.19 compensatory damages and $100,000.00 punitive damages (R. 147, 1887-1888). Petitioners moved to set the verdict aside as contrary to the law and the evidence and to grant them a new trial (R. 147-150). Pending such motion, petitioners filed their motion to dismiss Laburnum's notice of motion for judgment and to enter judgment for petitioners on the ground that the trial court was without power, authority and jurisdiction to hear and determine the issues in the action because of the provisions of the Labor Management Relations Act, 1947[4] (herein called "Act"), and Article I, Section 8 of the Constitution of the United States (R. 151). The trial court overruled both motions (R. 152) and on July 5, 1951, entered judgment in favor of Laburnum and against petitioners, jointly and severally, for $275,437.19,

[4] 61 Stat. 136, c. 120, Sections 1 et seq., Public Law 101.

with interest at 6% per annum from date of verdict until paid, and costs (R. 152-153). Petitioners excepted (R. 152-153).

Thereafter, petitioners duly filed their Notice of Appeal and Assignments of Error (R. 154-179).[5] Upon petition for writ of error and supersedeas,[6] the Virginia Supreme Court on January 24, 1952 awarded a writ and supersedeas (R. 1943). In the Notice of Appeal and Assignments of Error (R. 154-179) and in said petition, petitioners asserted (R. 154, Tr. 1985):[7]

> "1. The Trial Court erred in refusing to sustain and in overruling the defendants' motion to dismiss the plaintiff's notice of motion for judgment and to enter final judgment for the defendants on the ground that the Court was without power, authority and jurisdiction to hear and determine the issues in this action because of the provisions of the Labor-Management Relations Act, 1947 (61 Stat. 136, c. 120, Sections 1, *et seq.*, Public Law 101) and Article I, Section 8, of the Constitution of the United States. The Trial Court's action was repugnant to, and in violation of, said statutory and constitutional provisions.
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> "2. The Trial Court erred in entering the judgment of July 5, 1951, on the verdict of the jury, that the plaintiff recover of the defendants, jointly and severally, the sum of $275,437.19, with interest and costs, because the Trial Court was without power, authority and jurisdiction to enter said judgment because of the provisions of the Labor-Management Relations Act, 1947 (61 Stat. 136, c. 120, Sections 1, *et seq.*, Public Law 101) and Article I, Section 8, of the Constitution of the United States, and said judgment is void because it is repugnant to, and in violation of, said statutory and constitutional provisions."

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[5] Pursuant to Rule 5:1, Section 4 of the Rules of the Supreme Court of Appeals of Virginia. The notice stated, *inter alia*, petitioners' intention to apply for a writ of error and supersedeas (R. 154).

[6] By stipulation of counsel, the petition "need not be printed" (R. 1981).

[7] "Tr." refers to the certified transcript of the record filed in the Supreme Court of the United States.

In its opinion filed April 20, 1953 (R. 1945), the Virginia Supreme Court, dealing with the issue of the trial court's power, authority and jurisdiction to hear and determine the issues involved in the action for the reasons aforesaid, held the "motion to dismiss was properly overruled" and rejected petitioners' contention that because Laburnum's notice of motion and the jury's verdict of petitioners' liability were grounded upon conduct which constituted an unfair labor practice within the meaning of Section 8(b)(1)(A) of the Labor Management Relations Act, 1947 (herein called "Act"), for which the Act provided exclusive remedies and procedures, superseding a common-law tort action for damages in a state court, the trial court was deprived of jurisdiction to hear and determine the instant action for damages based upon such conduct and to enter its said judgment of July 5, 1951, against petitioners, and each of them. It declared (R. 1948):

> "We may assume, without deciding, that the acts of the defendants so affected interstate commerce as to come within the purview of the Act and, at the instance of the plaintiff, could have been dealt with in the manner there prescribed. But it does not follow that that was the only redress open to the plaintiff. It did not seek relief because the acts of the defendants' agents were unfair labor practices, nor is its present case predicated upon the Act. It sought damages for a completed common-law *tort* for which admittedly the Act affords no redress";

that state courts have not "been deprived of their traditional power and jurisdiction to deal with unlawful conduct committed within their respective territorial limits during the course of a labor dispute which may affect interstate commerce" (R. 1949), and that (R. 1949-1950):

> "While the Act[8] provides a remedy to restrain the commission of acts constituting unfair labor practices, there are no words which indicate that such remedy

[8] Labor Management Relations Act, 1947.

> is exclusive, or that the Act was designed to deprive an employer or his employees of the common-law right of action in a State court for acts of violence or intimidation which may constitute unfair labor practices. Nor does the exercise by the State of its jurisdiction in enforcing such cause of action conflict with any of the provisions of the Act, or in any way impinge upon the rights thereby protected."

Having so concluded and held, the Virginia Supreme Court, upon a consideration of the issues of petitioners' liability and the amount thereof, approved the jury's verdict of petitioners' liability (R. 1957) but, holding that the jury's award of certain elements of damages was not warranted under the evidence (R. 1963-1965, 1972) and that Laburnum was entitled to recover compensatory damages of $29,326.09 and punitive damages of $100,000, the Virginia appellate court concluded that "there is error in the judgment complained of", modified the trial court's judgment "by striking therefrom the sum of one hundred forty-six thousand, one hundred eleven dollars and ten cents" but affirmed "the balance of the judgment for the sum of" $129,326.09, with interest and costs, and ordered petitioners to pay the costs in said appellate court and its judgment certified to the trial court.[9] (R. 1973-1974)

Laburnum's theory of liability, manifest from the notice's allegations and Laburnum's requested instructions ap-

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[9] In its opinion (R. 1973) the Virginia Supreme Court cites Virginia Code, Section 8-493 as authority to modify the judgment under review by striking a portion of the money judgment and affirming as to the balance. Such statutory authority is as follows:

> "*Decision of Supreme Court of Appeals.*—The Supreme Court of Appeals shall affirm the judgment, decree or order if there be no error therein, and reverse the same, in whole or in part, if erroneous, and enter such judgment, decree or order as to the court shall seem right and proper *and shall render final judgment upon the merits whenever, in the opinion of the court, the facts before it are such as to enable the court to attain the ends of justice. A civil case shall not be remanded for a trial de novo except when the ends of justice require it,* but the Supreme Court of Appeals shall, in the order remanding the case, if it be remanded, designate upon what questions, or points a new trial is to be had." (Italics supplied)

proved and read to the jury by the trial judge,[10] is that Laburnum's work as a contractor in Breathitt County, Kentucky, was stopped, its contracts cancelled, its property and reputation damaged, and other contracts for work lost because W. O. Hart, a field representative of UCW, had sought, and Laburnum had refused, to have Laburnum recognize UCW as the sole bargaining agent for its employees in said Breathitt County, and Hart, in an effort to organize Laburnum's employees, had then taken "a mob of men variously estimated at between 75 and 100 men" to Laburnum's job site during July, 1949, and "in violent language" told Laburnum's employees they would not be permitted to work unless they joined UCW, and that Hart and the men with him were prepared to use force to hold a picket line, which Hart established, to prevent the employees from working, and because of such threats Laburnum's employees ceased their work and refused to return thereto.

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[10] Laburnum offered, and the trial court read to the jury, Instruction No. 5-A in which petitioners' liability was premised upon jury belief that W. O. Hart,

> " . . . while acting within the scope of his employment or authority, went to plaintiff's job site in Breathitt County, Kentucky, on July 26, 1949, with a disorderly crowd of men and for the purpose of organizing plaintiff's employees, and, that, by intimidation, threats, acts of violence or coercion, said Hart and his crowd of men caused plaintiff's workmen to leave their job, and put them in such fear as to cause them to refuse to return to work thereafter, . . ." (R. 132-133).

Instruction No. 7, offered by Laburnum and approved by the trial court (R. 133), is substantially the same as Instruction No. 5-A above.

Instruction No. 8, offered by Laburnum and read to the jury (R. 134), instructed the jury that both compensatory and punitive damages were warranted if, *inter alia*, the jury believed that for the purpose of "organizing the unorganized",

> ". . . Hart led men to plaintiff's job site in Breathitt County, for the purpose of compelling the employees of plaintiff to join one of the defendant unions, irrespective of such employees' wishes, and . . . Hart or others at his direction, by means of threats and intimidation, backed up by overwhelming force, did in fact compel some employees of plaintiff to 'sign up' with one of the defendant unions, and forced others to quit work. . . ."

Laburnum's Operations

Laburnum's operations, pertinent to the instant issue, are as follows:

Laburnum, a Virginia corporation with its home office in Richmond, Virginia (R. 455), specializes in industrial construction work, which includes "work of almost all crafts and trades"—electrical, piping, millwright, carpentry, heavy rigging "and work of that nature" (R. 456). Laburnum performs its work in nine different states (R. 457). According to Laburnum, from May, 1942, to December, 1949, its construction work aggregated $20,253,965.49 (R. 566, 656, 658). Its annual volume of business averages $2,000,000.00 (R. 458). From September 6, 1947, until the end of 1949, Laburnum did business amounting to more than $600,000 with Island Creek Coal Company, Pond Creek Pocahontas Company and subsidiaries (described as the third highest in coal production in the United States in 1948 and 1949 and the largest coal producers in West Virginia). Such work for Island Creek and Pond Creek and subsidiaries was performed in West Virginia and Kentucky. In 1949, at the time of the occurrence of the conduct upon which Laburnum based its complaint, Laburnum was engaged in work for such companies in Kentucky and West Virginia. The work in Kentucky was being performed at Pond Creek's No. 1 Mine, at Evanston, Kentucky, at which Pond Creek began to mine coal during June, 1949, and a substantial part of such coal was shipped by the Chesapeake & Ohio Railway Company from the place of mining to points outside Kentucky (R. 1818).

Narrative of the Facts and the Virginia Supreme Court's Decision and Judgment

By a "closed shop contract", dated April 15, 1947, Laburnum agreed with Richmond Building and Trades Council—an AFL affiliate—that Laburnum would employ only members of local unions associated with Council and

that where no such local unions had jurisdiction, Laburnum would request affiliated members of the AFL National Building Trades Department to furnish qualified workers and give to members thereof employment preference (R. 12-17; 739-740).[11]

On October 28, 1948, Laburnum and Pond Creek entered into a written agreement for the construction of a coal preparation plant at Pond Creek's No. 1 Mine in Breathitt County, Kentucky. In procuring carpenters and millwrights for this work Laburnum contracted with an AFL affiliate[12] "for the duration of this job". (R. 748) Laburnum procured other craftsmen from other AFL affiliated local unions; but no AFL union furnished laborers to Laburnum, who hired "local labor near the job site". (R. 513) Admittedly (R. 744-747), the carpenter-millwright contract did not cover Laburnum's laborers, and Paintsville Local Union No. 646 had not been certified by National Labor Relations Board as collective bargaining agent for Laburnum's employees.

Subsequent to the October 28, 1948, agreement for the coal preparation plant, Laburnum procured other contracts with Pond Creek, Island Creek and "various associated companies", including $542,500 of additional work which Laburnum contended (R. 636-637, 1529), the jury found and the Virginia Supreme Court agreed (R. 1962), it would have been awarded "but for the disruption of the business relationship by the acts of the defendants' [petitioners'] agents".

In July, 1949, Laburnum had 64 employees at the Breathitt County project, of which number 16 were employed as

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11 This agreement, without definitive terminal date, could be terminated on April 15, 1949, and on April 15 of each year thereafter, by three months' written notice (R. 16). No effective termination notice was given by either Laburnum or Council (R. 739).

12 Paintsville Carpenter Local Union No. 646, United Brotherhood of Carpenters and Joiners of America. A question arose whether the local at Paintsville or an AFL local at Prestonsburg, Kentucky, had jurisdiction, and subsequent to the above-mentioned contract with Paintsville Local Union No. 646, jurisdictional friction developed also with an AFL affiliate local union at Salyersville, Kentucky. (R. 741-742).

laborers. (R. 666, 667) Laburnum's laborers were unorganized (R. 1414), wanted to be organized (R. 1416) and there was a movement among them to seek membership in some union. (R. 1396) On July 8, 1949, four laborers "signed up" with Hart (R. 1255-1256, 1304) who, being advised on July 12 that the laborers wanted to see him, left word for them to attend a meeting on July 24.

On July 13 or 14[13] Hart 'phoned from Pikeville, Kentucky, to Laburnum's president (A. Hamilton Bryan) in Richmond, Virginia. Bryan's version, denied by Hart (R. 1257-1258), is that Hart told him "Laburnum was working in United Mine Workers' territory", that he (Hart) intended "to organize all of" Laburnum's employees; and that if Laburnum did not "recognize his organization", he "would close the job down" (R. 532) and that it would be necessary to increase laborers' pay from 90¢ (R. 1393) to $1.36 an hour and carpenters' pay to $1.86 an hour. (R. 561). Bryan immediately undertook to have Laburnum's laborers join AFL unions as carpenter helpers (R. 539, 753-754)—a plan which Bryan had previously employed at another plant which District 50 sought to organize (R. 1363, 1365-1372)[14]—and instructed that one of Laburnum's employees, an official of the carpenters' local union at Salyersville, be "allowed time to go and talk" to the laborers and "sign them up". (R. 755) His instructions were carried out (R. 755).[15] The applications were never returned to the local. (R. 1390) Several witnesses, testifying that they signed such applications, related that they heard nothing further concerning them. (R. 1403, 1410, 1416-17).

On July 24, nine of Laburnum's sixteen laborers, who already were or became UCW members, (together with

[13] Unless indicated otherwise, the dates refer to 1949.

[14] Bryan admitted that on this occasion he contacted an AFL representative and told him that "if these men were not in his union he had better get busy". (R. 728)

[15] Indicating his determination to control representation of Laburnum's employees, Bryan proclaimed to the jury, "I have tried to say repeatedly that we are lined up with the A. F. of L." (R. 759)

employees of two other contractors doing work at Pond Creek's No. 1 Mine) met with Hart and, upon Hart's informing them that Laburnum had had sufficient time "to answer our call by letter" and "it was up to them to take whatever action they deemed necessary", elected a negotiating committee (R. 1420), unanimously voted to strike (R. 1258-1261, 1420), planned strike procedures (R. 1420) for "union recognition and union contract, in the way of more wages and other conditions of employment". (R. 1261)

On the night of July 25, Bryan left Richmond for the Breathitt County job site pursuant to a telephone conversation from Laburnum's superintendent who reported that the next day UCW "were coming to the job . . . to stop our employees from working and to close down the job". (R. 542) En route, Bryan attempted to call Hart but in his absence had a telephone conversation with David Hunter, Regional Director for District 50 and for UCW, requesting Hunter to direct Hart not to interfere with Laburnum's work before Bryan had an opportunity to talk with Hart at the job site. (R. 544) According to Bryan, Hunter stated he would try to get the message to Hart (R. 544) but when Bryan reached the job site between 2:30 and 3 P. M. on July 26, work had stopped. (R. 545-546)

In both the trial court and in the Virginia Supreme Court petitioners contended that cessation of work occurred and continued because of Laburnum's employees' refusal to cross a peaceful picket line, while Laburnum contended that the employees' refusal to work resulted from threats of violence and intimidating conduct for which petitioners are legally responsible.

While petitioners' version is that Hart (UCW representative) was seeking UCW members among the unskilled laborers and carpenter helpers only and sought the support of all workmen by inviting them to join the strike "if they wanted to" and that the unskilled laborers quit work, joined the strike and of the total of sixteen, twelve signed

UCW membership cards and three signed District 50 cards (R. 665-667, 1270-1273) voluntarily (R. 1264, 1267, 1349, 1386, 1387, 1398, 1406-1407, 1410-1412, 1423), Laburnum relied upon testimony—denied by petitioners (R. 1264, 1282-1284, 1338, 1411)—that Hart with a group of men (estimated variantly from 20 to 150), which admittedly included some of Laburnum's laborers (R. 927-928), came to Laburnum's job site on July 26 and insisted that the job belonged to UCW and he was taking over the job and that all employees join UCW, under threat that if they did not do so "you are going to have to quit work" or "we will kick you out of here" (R. 861, 902, 912-913, 931, 949); and two witnesses related that two unidentified laborers were forced to sign with UCW. (R. 853, 979-980) The Virginia appellate court declared that the jury verdict "resolved this conflict in favor of the plaintiff." (R. 1954) Witnesses for Laburnum smelled whiskey on the group of men with Hart and two of them had "guns sticking under their belts" and "saw prints of guns under their belts" (R. 844, 902) and they had knives "whittling around on sticks." (R. 917, 961) Other witnesses, both for Laburnum (R. 878, 887, 934) and for petitioners (R. 1345, 1351, 1392-1393, 1397, 1405, 1422) saw no drinking or smelled any whiskey and saw no guns, and Bryan's report of the July 26 incident stated that "nobody saw any guns." (R. 790) The Virginia appellate court found (R. 1953) that "There is evidence that this 'was a very rough, boisterous crowd', that some of the men used abusive language, that some were drunk, and some carried knives and guns."

Witnesses for both petitioners (R. 1268, 1349) and Laburnum (R. 949-950, 964) agreed that the AFL representative told Hart that his membership would continue to work if "you don't put on a picket" (R. 949, 964) but agreed that they would honor a picket line (R. 869, 879, 936, 984-985, 994) and so instructed Laburnum's employees. (R. 888) Hart then wrote and caused to be posted a picket sign reading "UMWA Pickett Line. Contractors—

Laburnum" (R. 567) and picket signs reading "District 50, UMWA, Local 778-A—Picket Line" and

"On Strike

Local Union No. 778-A

Carpenters Helpers and Laborers

District 50, UMW of A"

were at Laburnum's job sites on July 31. (R. 586-587) Although the AFL representative agreed "it is just ingrained with a union man to honor a picket line" (R. 874), and witnesses for petitioners and Laburnum agree that a statement by Hart that he would bring a large number of men (estimated at 300 to 500 and admitted by Hart as 500) from Beaver Creek was made after the AFL representative had agreed to honor the picket line (R. 949-950, 1276), and some skilled workers declared they were not afraid to return to work (R. 1321, 1330, 1340-1341, 1347, 1349-1350) and that they honored the picket line (R. 973, 1340-1341, 1399), the trial court permitted, and the Virginia Supreme Court approved (R. 1968), the AFL representative to testify (R. 878) that his reason for telling Hart he would honor the picket line was, "It was my only way out" and witnesses, when asked "why" they had not gone to work, to answer that "we were afraid to" (R. 846), or "There were too many fellows there talking too big for me" (R. 932), or "they said not to" (R. 950) or "I didn't feel it was safe" (R. 975, 982), or "I was scared" (R. 952), or "I didn't think it was a healthy thing to do" (R. 974), or "I felt there was danger there" (R. 992) and other witnesses to give substantially similar answers. (R. 906, 913, 925, 947). The Virginia appellate court (R. 1955), conceding that

> ". . . some of the Laburnum employees refused to return to work because Hart had posted picket signs on the job site and these employees refused to pass these signs or cross the so-called 'picket lines' ",

declared that

> ". . . there is ample evidence to support the finding that the plaintiff's employees refused to resume their work because of the threats and conduct of Hart and his associates".

On July 27 twenty-five or thirty skilled workers with Bryan, pursuant to their determination at a local union meeting on the previous night, drove their automobiles, in caravan fashion, to Laburnum's job site. There Bryan and the employees found a picket sign; the men halted; Bryan "tore the picket sign down" and threw it away (R. 1320, 572); and a group of seven or eight employees, at Bryan's invitation, and led by him, returned to work. (R. 572-573) Hart was not there (R. 1304) but another UCW representative was, and he explained to Bryan that he was there to "bring about a settlement if I possibly can", that UCW had no intention of getting the carpenters to join and that the carpenters were at liberty to cross the picket line if they felt like so doing, when Bryan said "All right let's go to work". The men ceased work when Laburnum's superintendent and an AFL steward "decided we would cease for a day or two and see if it wouldn't die down". (R. 968) Bryan conceded that the UCW representative made no threats (R. 793) but several witnesses for Laburnum testified that two unidentified men, sitting on a lumber pile, said, "If you men works, there will be plenty of men here in a little bit and they will come rough" (R. 963) and that "they will fish you out of that pond". (R. 851) The Virginia Supreme Court declared that some of the workers on July 27 "were again confronted by representatives of the opposing labor organization who repeated their abusive threats, and consequently were afraid to go back to work". (R. 1955)

Admitting that on August 1 Hart stated he represented and sought recognition for the laborers only, Bryan proposed, and Hart rejected (R. 796), a plan that Laburnum

could get along without laborers and that their work be done by carpenters (R. 796). The Virginia Supreme Court also adopted Bryan's version—denied by Hart (R. 1280)—that on August 1 Hart " 'left no doubt in anybody's mind that he was going to have people to stop any men from working who tried' " and " 'continually threatened to bring a large crowd of people from Beaver Creek and other places to stop us from working . . . unless we signed a paper recognizing his organization as the representative of the laborers' " and that if the Laburnum men " 'went back to work he was going to close down the mine operations by stopping the United Mine Workers from working for Pond Creek' ". (R. 1955-1956) Bryan admitted that no one shot "or made a pass" at him, or prevented his going about, that no one got "a mauling"; and that he heard of no one being "shot at" or of any property being destroyed. (R. 803-804).

Although Bryan acknowledged that Laburnum had worked in plants where employees were represented by District 50 and by United Mine Workers, and Laburnum's employees were AFL members (R. 725), when Hart suggested to Bryan that "we work together", and that "we are doing it in other places", Bryan answered, "Well, it just won't work." (R. 1281) Bryan refused to recognize UCW, as he stated, because of the agreement with the AFL local unions and the Richmond Building and Trades Council (R. 531) and also because AFL would withdraw its members from other jobs. (R. 1424).

On August 4 Pond Creek cancelled its contract for the coal preparation plant which was 95% completed (R. 523-524) and its subsidiary (Spring Fork Development Company) terminated its contract for 25 dwellings. (R. 600-602) The next day Bryan conferred with Hunter who expressed the view that the parties should be able to make an agreement "for the laborers" and that UCW people would work peacefully alongside of AFL men. Bryan replied that he "just didn't think that would work

out''; that the ''wage rate of $1.36 was preposterous''. The Virginia appellate court found, as Bryan claimed (R. 575), that he sought, but was denied, police protection (R. 1955), but Bryan did not claim that he undertook to process any unfair labor practice charge with the National Labor Relations Board (herein called ''Board'' or ''NLRB'') against petitioners or Hart. He advised Hunter that he ''expected to hold him and the United Mine Workers responsible for what had happened.'' (R. 609, 611, 612).

Laburnum continued to do work for Island Creek. (R. 664-665) During September, 1949, through December, 1949, it submitted bids on projects at Pond Creek's invitation. (R. 669-672) Pond Creek would have awarded the work to Laburnum if it had been the low bidder. (R. 999) Meanwhile, on November 16 Laburnum instituted its instant action against petitioners (R. 2) and contended at the trial that ''the business relationship was destroyed on July 26.'' (R. 1633)

In the Spring of 1950, Island Creek invited Laburnum to submit a bid on proposed construction in West Virginia. Bryan inquired of Hunter if he would expect Laburnum to use UCW members and to make an agreement with UCW. Receiving an affirmative answer, Bryan reported to Island Creek that Hunter had stated that without a UCW contract, he ''would absolutely do everything in his power to see that we do not build those buildings''. Bryan's memorandum of Hunter's statement, not in accord with his report to Island Creek, declared, in part, that Hunter stated (R. 801):

> '' • • • he would attempt to organize our laborers and our other workers, and that if he was successful he would expect us to make a contract with UCW granting recognition to it.''

On May 18, 1950, Island Creek wrote to Bryan stating that it ''had about four or five other reputable and well-

qualified concerns, which have contracts with the United Mine Workers, that are going to bid" and because "of the facts outlined to me" Laburnum was requested to refrain from bidding. (R. 673-674) The Virginia appellate court concluded (R. 1957):

> "Hence, there is ample evidence to sustain the finding that the acts and conduct of Hart in July, 1949, ratified by Hunter, disrupted the business relationship between Laburnum, Pond Creek Pocahontas Company and Island Creek Coal Company, and entitled Laburnum to an award of damages against Hart's principals."

Under instructions of the trial court, there was presented to the jury the issue whether Laburnum's alleged damages had resulted from the wrongful conduct of Hart and the men with him, as submitted by Laburnum's instructions 5-A, 7 and 8 (*infra*, p. 7) or whether, as petitioners contended in their instruction "E" (R. 139), such damages followed because Laburnum's employees "refused to work solely because of the existence of a peaceful picket line and that they would have worked if there had been no picket line." The jury having found against petitioners, the Virginia appellate court agreed that "because of the insolent and abusive language and threats of Hart and those accompanying him, the Laburnum employees, who were greatly outnumbered, were intimidated and afraid to proceed with their work" and that the "employees refused to resume their work because of the threats and conduct of Hart and his associates". (R. 1955) Petitioners urged in the Virginia appellate court, as in the trial court, that, under declarations of the National Labor Relations Board, such conduct involved unfair labor practices within the purview of Section 8(b)(1)(A) of the Act, and that by adoption of the Act Congress had preempted the field of labor relations and had provided an exclusive federal remedy in Section 10 thereof and thereby foreclosed to the state courts jurisdiction to entertain any action for

damages based upon such conduct. "Assuming without deciding, that the acts of the defendants (petitioners) so affected interstate commerce as to come within the purview of the Act" and, at Laburnum's instance, could have been dealt with in the manner therein provided, the Virginia Supreme Court held that "there are no words which indicate that the remedy" provided for in the Act to restrain the commission of unfair labor practices "is exclusive", or that the Act "was designed to deprive an employer or his employees of the common-law right of action in a State court for acts of violence or intimidation which may constitute unfair labor practices" and that the exercise by the State of its jurisdiction in enforcing such cause of action did not "conflict with any of the provisions of the Act, or in any way impinge upon the rights thereby protected." (R. 1949-1950) These pronouncements, and others, by the Virginia appellate court to sustain the state court's jurisdiction, appear herein at pages 5-6, 13 to 17, to which reference is made.

The Virginia appellate court, having concluded that the trial court had jurisdiction and that petitioners' motion to dismiss was properly overruled, and that the evidence supported the jury's verdict of petitioners' liability, found that there was error in the amount of the jury verdict, modified the trial court's judgment in Laburnum's favor against petitioners and affirmed the balance as herein shown (*infra*, p. 6).

VI.

SPECIFICATION OF ERRORS

The Supreme Court of Appeals of Virginia erred:

1. In holding that petitioners' motion to dismiss Laburnum's notice of motion for judgment and to enter a final judgment for petitioners on the ground that the trial court was without power, authority and jurisdiction to hear and determine the issues in said action "was properly

overruled" and in failing and refusing to hold that said motion should have been sustained.

2. In holding that the Act did not provide an exclusive remedy for "the acts of defendants", that the remedy provided for in the Act was not "the only redress open to the plaintiff" and that Laburnum "did not seek relief because the acts of the defendants' agents were unfair labor practices, nor is its present case predicated upon the Act. It sought damages for a completed common-law tort for which admittedly the Act affords no redress."

3. In holding that the Act did not deprive state courts "of their traditional power and jurisdiction to deal with unlawful conduct committed within their respective territorial limits during the course of a labor dispute which may affect interstate commerce."

4. In holding that "there are no words" in the Act which indicate that the remedy provided in the Act "is exclusive, or that the Act was designed to deprive an employer or his employees of the common law right of action in a State court for acts of violence and intimidation which may constitute unfair labor practices."

5. In holding that "the exercise by the State of its jurisdiction in enforcing" a cause of action by an employer for damages for acts of violence or intimidation which may constitute unfair labor practices does not "conflict with any of the provisions of the Act, or in any way impinge upon the rights thereby protected."

6. In affirming the judgment of the Circuit Court of the City of Richmond, Virginia, to the extent of $129,326.09, with interest at 6% per annum from February 16, 1951, until paid, and for costs expended by Laburnum "about the prosecution of its notice of motion for judgment in said circuit court" and ordering that Laburnum recover of petitioners its costs by it expended "about the prosecution

of the writ of error and supersedeas'' in said Virginia Supreme Court.

7. In failing and refusing to reverse, set aside and hold void the judgment of said Circuit Court of July 5, 1951, for $275,437.19, with interest and costs, in its entirety, and to set aside the jury verdict and enter judgment for petitioners, and each of them.

8. In failing and refusing to find and hold that the provisions of the Act were applicable to the facts of the instant case.

9. In failing and refusing to hold and conclude (1) that the Act provides exclusive remedies and procedures for conduct proscribed by Section 8(b)(1)(A) thereof; (2) that the Act deprives an employer of his common-law right of action in a state court for damages based upon such conduct; (3) that by reason of the provisions of said Act, the Circuit Court of the City of Richmond, Virginia, was without power, authority and jurisdiction to hear and determine the issues in the instant case and to enter its said judgment of July 5, 1951, against petitioners, and each of them, and such judgment is void; and (4) that judgment should have been entered for petitioners, and each of them, and Laburnum's notice of motion dismissed.

VII.

SUMMARY OF ARGUMENT

A.

Laburnum, a Virginia corporation with its home office in Richmond, Virginia, specializes in industrial construction work and operates in nine states. For the period from May, 1942, to December, 1949, its work aggregated more than $20,000,000. Its annual business volume averages $2,000,000. From September 6, 1947, until the end of 1949, Laburnum did work amounting in excess of $650,000

with two coal producing companies and subsidiaries whose coal production in 1948 and 1949 was the third highest in the United States and the largest in West Virginia. This work Laburnum performed in West Virginia and Kentucky. The mine in Kentucky at which Laburnum performed work began to mine coal during June, 1949, and a substantial part of such coal was shipped by the Chesapeake & Ohio Railway Company from the place of mining to points outside Kentucky.

Laburnum's multistate industrial construction operation is subject to the Board's jurisdiction. The Board has asserted jurisdiction over construction enterprises whose annual dollar volume equals or exceeds $25,000 in interstate sale of services. This court has approved Board's assertion of jurisdiction over a multistate construction operation, saying such "facts emphasize the interstate movement of the services and material."

B.

The type of conduct found by the Virginia Supreme Court to have been carried out by petitioners falls within activity interdicted by Section 8(b)(1)(A) of the Act and the Board has exercised its jurisdiction and power thereover.

To effect the Act's purpose and policy of prescribing the rights of both employees and employers in their relation affecting commerce as defined in the Act and to define and proscribe practices by both labor and management, Congress, in Section 8(b)(1)(A), made it an unfair labor practice to restrain or coerce employees in the exercise of rights guaranteed in the Act's Section 7. Laburnum's notice of motion, the trial court's instructions and the Virginia Supreme Court's findings were to the effect that Laburnum's employees refused to return to work because of "insolent and abusive language and threats of Hart and those accompanying him." Such conduct has been found by both the Board and federal courts of appeals to be

within the purview of conduct proscribed by said Section 8(b)(1)(A).

C.

Petitioners submit that the National Labor Relations Board has exclusive jurisdiction over the type of conduct found by the Virginia Supreme Court to have been carried out by petitioners so as to preclude the state court from hearing and determining the issues in the common law action based upon such conduct.

To eliminate disruptions to commerce in the field of labor-management relations, Congress adopted the administrative approach and granted the National Labor Relations Board exclusive power "to prevent any persons from engaging in any unfair labor practices (listed in Section 8) affecting commerce". Section 10(a). Under Section 10(j) the Board, but not a private party, may, upon issuance of a complaint, seek injunctive relief in a federal court but redress by a private party against proscribed activity is through the administrative process of filing a charge with the Board which "sets in motion the machinery of an inquiry." As stated in *Amazon Cotton Mill Co.* v. *Textile Workers Union*, 4 Cir., 167 F. 2d 183, 187: "Congress has worked out elaborate machinery for dealing with the whole field of labor relationships . . . and has provided for the handling of unfair labor practices by an administrative agency equipped for the task." Recently, this Court in *Garner* v. *Teamsters, etc. Union*, —— U.S. ——, 98 L. ed. (Adv. op., p. 161) rejected an employer's assertion of its right to resort to a state court for injunctive relief on its theory that it was an enforcement of state or local law where the subject was covered by the Act.

1. The lack of federal interest which grounded the Court's recognition of state regulation in *Allen-Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U.S. 740, and *International Union* v. *Wisconsin Employment Relations Board*, 336 U.S. 245, was supplied by Congress'

enacting Section 8(b)(1)(A). In *Plankinton Packing Co. v. Board*, 338 U.S. 953, *United Auto Workers* v. *O'Brien*, 339 U.S. 454, and *Amalgamated Association* v. *Board*, 340 U.S. 383, the Court declared the supremacy of the federal Act over state law. In *O'Brien*, it rejected state law because of a conflict between state and federal regulations and because "Congress occupied this field and closed it to state regulation." In this action, as in *Garner* v. *Local Union*, —— U.S. ——, 98 L. ed. (Adv. Op., p. 161) state court action must be rejected over "matters expressly placed within the competence of the federal Board."

2. Herein, as in *Garner*, the Act became the "supreme law of the land" as to the type of conduct involved in this case and "cannot be curtailed, circumvented or extended by a state procedure merely because it will apply some doctrine of private rights." *Garner* v. *Teamsters', etc., Union, supra*, p. 170. Neither *Allen-Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U.S. 740, nor *International Union* v. *Wisconsin Employment Relations Board*, 336 U.S. 245, are apposite, for in neither was there federal regulation of the subject activity involved in those respective cases. But Congress was not indifferent to the conduct in the instant case. "This is not an instance of injurious conduct which the National Labor Relations Board is without express authority to prevent and which is 'governable by the State or it is entirely ungoverned.' " *Garner* v. *Teamsters' Union, supra*, p. 164. By "the Labor Act Congress preempts the field that the act covers in so far as commerce within the meaning of the Act is concerned." House Rep. No. 245 on H.R. 3020, Legis. History of the LRMA, 1947, p. 335.

Contrary to the Virginia appellate court that the Act afforded Laburnum no redress (R. 1948), the Act did accord it the Act's procedures and remedies.

If the procedures and remedies afforded Laburnum are inadequate, the remedy lies with Congress.

3. Both the legislative history of Section 8(b)(1)(A) and other provisions of the Act show congressional intent to foreclose state authority over a common-law tort action instituted by a private party for the instant conduct.

a. Provisions in the Hartley Bill (H.R. 3020), making the type of conduct involved herein "unlawful concerted activities" and providing for damage actions in federal district courts by private persons injured thereby, were deleted in the Senate and such deletions agreed to by the Managers on the Part of the House. It is unreasonable to assume Congress would have rejected damage actions in federal tribunals and yet have intended that violators under Section 8(b)(1)(A) would be subjected to state court action for damages. There are no recorded indicants of such congressional intent.

In the House debates, the suggestion was made that the Act provide, "Nothing in this Act shall be construed to invalidate any state law or constitutional provision" but rejected by Congressman Case's reply that such a provision would "establish State rights to deal with all phases of industrial relations in spite of any provisions whatsoever in the Act." 93 Cong. Record, p. 3559.

Both proponents of and opponents to Section 8(b)(1)(A) argued that acts proscribed under that section are subject to state criminal process, but no suggestion appears in the debates that infringement of those statutory provisions could serve as a basis for a common-law tort action in a state court instituted, as in this case, by a private party.

These debates emphasize Congressional intent to make exclusive Board jurisdiction of the matters within the purview of said section.

b. Under Sections 301 and 303 of the Act, Congress provided for damage actions it deemed permissible for violation of the Act's provisions. These provisions bespeak congressional intent to limit an employer's right to sue and to limit court jurisdiction therefor to those courts which Congress specifically indicated. *Expressio unius est exclusio alterius* is applicable.

c. Congress itself in the Act denoted the limited area reserved for state authority. This Court, in *Amalgamated Association* v. *Wisconsin Employment Relations Board*, 340 U.S. 383, 397-398, stated that Congress "demonstrated its ability to spell out with particularity those areas in which it desired state regulation to be operative." The Court observed that "congressional direction as to the role that states were to play in the area of labor regulation covered by the federal Act" was to be found in Section 10(a) permitting the Board to cede its jurisdiction to a state agency, in Section 14(b) subordinating the federal Act to state law concerning union-security agreements where such agreements were borbidden by state law, and in Sections 202(c) and 203(b) which concern the federal mediation and conciliation service.

These express reservations of state power in the field of labor relations establish congressional limitations on state authority and congressional intention and determination that Congress went as far as it deemed it should in reserving such limited power, authority and jurisdiction to the states. As stated in *Garner* (p. 170): "On the basis of the allegations," and upon the conduct found by the Virginia Supreme Court to have been carried out by petitioners, "[Laburnum] could have presented this grievance to the National Labor Relations Board. The [petitioners] were subject to being summoned before that body to justify their conduct. We think the grievance was not subject to litigation in the tribunals of the State."

The Act's provisions concerning damage actions and congressional limitations of state power demonstrate that the Virginia Supreme Court erred in holding (R. 1949-1950) "there are no words" in the Act indicating that the remedy in the Act "is exclusive, or that the Act was deprived an employer or his employes of the common law rights of action in a state court for violence and intimidation which may constitute unfair labor practices. That court erred in concluding, as to this case, that the Act "was not the only redress open to" Laburnum. (R. 1948)

D.

The Virginia Supreme Court erroneously reasoned that Laburnum "did not seek relief because the acts of defendants' agents were unfair labor practices, nor is its present case predicated upon the Act. It sought damages for a completed common law tort for which admittedly the Act affords no redress" (R. 1948). The test of state authority is not the characterization or appellation which Laburnum or the Virginia appellate court gives to its action, but rather whether the condemned activity lies within the "field" occupied by Congress, in which event the doctrine of federal preemption applies and the federal Act supersedes all substantive rights and remedies flowing from state authority. Failure or omission to denominate activity as unfair labor practices *eo nomine* in common-law actions has not deterred courts from so characterizing them. Thus the Virginia Supreme Court misconceived the basis of Laburnum's action.

Laburnum's contention that a state court could determine whether an employer's private right had been infringed and the Virginia appellate court's reasoning and conclusions that the Act did not deprive state courts "of their traditional power and jurisdiction to deal with unlawful conduct committed within their respective territorial limits during the course of a labor dispute which may affect interstate commerce," as concerns this case, and that Laburnum sought damages "for a completed common law tort" (R. 1948, 1949) based on a violation of a private right were rendered untenable by this Court in *Garner*.

Fallacious is the conclusion (R. 1950) of the Virginia Supreme Court that exercise of jurisdiction by the State of Laburnum's cause of action neither conflicted with the Act's provisions nor impinged upon rights thereby protected. Under the Court's test in *Garner* that "The conflict lies in remedies, not rights" and "when two separate remedies are brought to bear on the same activity, a conflict is imminent", a state court judgment for conduct forbidden by the Act, based upon a jury verdict, totally varies

with the remedies provided by the Act and "conflict is imminent."

The exercise of state jurisdiction did impinge upon rights protected by the Act. The activity for which petitioners were found responsible was obtaining from Laburnum for its unorganized laborer employees union recognition and higher wages, a protected activity both under Kentucky law, where the activity occurred, and under the Act. On the issue whether the men refused to return to work solely because of a peaceful picket line or because of the wrongful conduct of Hart and the men with him, the jury found against petitioner. This factual determination was one which Congress had entrusted to the Board as an administrative agency possessing skill and experience under Section 8(b)(1)(A) since it involved the question if the *means* employed fell within the ambit of conduct barred by that section. Petitioners had the right to have this disputed issue determined by the federal Board and courts pursuant to the Act's remedies and procedures. It is immaterial whether the Board would have agreed with the Virginia jury and courts. "There is no indication that the statute left it open for such conflicts to arise." *Garner* v. *Teamsters', etc., Union, supra*, p. 170. The Board itself has asserted "that its jurisdiction is inclusive in all matters which the Act entrusts to it." Seventeenth Annual Report of the NLRB (1952), p. 21.

E.

Laburnum made no effort to process its complaint with the federal Board. Its president had threatened that he expected to hold the "United Mine Workers responsible." Ignoring the "peaceful procedures" provided by Congress in the Act's Section 10 "for preventing" any interference by petitioners "with the legitimate rights" of Laburnum "in order to promote the full flow of commerce", Laburnum permitted the potentialities of a jury damage award to be the paramount factor rather than the avoidance of a disruption to commerce through the procedures made available

by Congress. If the Virginia appellate court's decision is permitted to stand, then "the elaborate administrative machinery for dealing with the whole field of labor relationships, a matter requiring specialized skill and experience" (*Amazon Cotton Mill Co.* v. *Textile Workers Union, supra*) would be made abortive and the federal statutory scheme supplanted by jury determinations and, contrary to *Garner*, the congressional purpose of vindicating public rights would be subordinated to private rights and the congressional intent "to dispel the confusion resulting from dispersion of authority and to establish a single paramount administrative or quasi-judicial authority in connection with the development of the Federal American Law regarding collective bargaining" would be rejected. Senate Report No. 573, 74th Cong., 1st session, p. 15, quoted in *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U.S. 261, 267. Such result would violate pronouncements in *Garner* (p. 165) that Congress' substantive rule of law was not "to be enforced by any tribunal competent to apply law generally" but by the Board for "centralized administration of specially designed procedures" for uniform application and "to avoid . . . diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies."

The Virginia Supreme Court was in error in sustaining the State trial court's jurisdiction. Judgments of both the Virginia Supreme Court and the trial court should be reversed, set aside and held for naught, Laburnum's notice of motion dismissed and judgment entered for petitioners and each of them.

VIII.

ARGUMENT.

A. The Board Has Asserted Jurisdiction of Construction Companies Operating On a Multistate Basis.

Factual data regarding Laburnum's multistate operations has been discussed (*infra*, p. 8). While Laburnum is a Virginia corporation with its home office in Richmond,

Virginia, it performs its work in nine states; and from September 6, 1947 until the end of 1949, it performed construction work for Island Creek, Pond Creek and subsidiaries in Kentucky and West Virginia, amounting to more than $650,000 (R. 487-489).[16]

The Board has heretofore asserted jurisdiction over construction enterprises whose annual dollar volume of business equals or exceeds $25,000 in interstate sale of services. In *Arthur G. McKee and Company*, 94 NLRB 399, 400 (1951), in asserting jurisdiction over such an enterprise, the Board declared that

> "As the Respondent operates on a multistate basis, and performs services in excess of $25,000 per year in each of several states, we find that the Respondent is engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act to assert jurisdiction in this case."

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[16] Plaintiff's Exhibit 34, received in evidence (R. 638), shows that this amount consisted of the following contracts, the dates and amounts thereof, and places of performance:

Sept. 6, 1947	Prefabricated dwellings, Delbarton, West Virginia	$95,631.00	*(P. Ex.35) (R. 639)
June 29, 1948	Stores at Delbarton and Holden, West Virginia	66,486.05	(P. Ex. 36) (R. 640)
Sept. 19, 1948	Warehouse, Holden, West Virginia	40,895.89	(P. Ex. 38) (R. 661)
Oct. 21, 1948	Store No. 15, Holden, West Virginia	34,313.31	(P. Ex. 39) (R. 662)
Dec. 9, 1948	Colored Lunch Room, Holden, West Virginia	9,550.39	(P. Ex. 40) (R. 662)
Dec. 13, 1948	Heating plant at tipple, Delbarton, West Virginia	21,236.05	(P. Ex. 41) (R. 662)
June 4, 1949	Addition to store, Holden, West Virginia	4,041.06	(R. 662-3)
Oct. 28, 1948	Coal preparation plant, Breathitt County, Kentucky	265,370.09	(R. 663)
Dec. 15, 1948	Dwellings, Breathitt County, Kentucky	41,282.05	(R. 663)
Dec. 8, 1948	Telephone Line, Breathitt County, Kentucky	4,591.59	(R. 663)
July —, 1949	Schoolhouse, Breathitt County, Kentucky	637.16	(R. 664)
June 28, 1949	Boiler Plant, Bartley, West Virgin. .	67,158.20	(R. 664)
	TOTAL	$631,192.84	

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* References are to Exhibits as they were designated in the trial court. "P. Ex." refers to Laburnum's exhibits.

See Seventeenth Annual Report of the NLRB (1952), Topic, "Jurisdiction of Board" (p. 9) and subheading "Multistate Enterprises" (pp. 13-15), and also *Foley Brothers, Inc.*, 97 NLRB 1482 (1952). Likewise, where a contractor had its principal place of business in one state and performed its contractual obligations in another state, this Court approved the Board's assertion of jurisdiction, saying that such facts "emphasize(s) the interstate movement of the services and materials". *International Bro. of Electrical Workers* v. *National Labor Relations Board*, 341 U.S. 694, 699 (1950).

While the Virginia Supreme Court "assume(d), without deciding that the acts of [petitioners] so affected interstate commerce as to come within the purview of the Act" (R. 1948), it is thus evident that Laburnum's business is subject to the Board's jurisdiction.

B. The Type of Conduct Found by the Virginia Supreme Court To Have Been Carried Out by Petitioners Falls Within Activity Interdicted by Section 8(b)(1)(A) of the Act.

The Act's purpose and policy, recited in Section 1 of the Act, are to prescribe the legitimate rights of both employees and employers in their relation affecting commerce and to provide orderly and peaceful procedures for preventing interference by either with the legitimate rights of the other, and to protect individual employee rights in their relations with labor organizations and to define and proscribe practices on the part of both labor and management which affect commerce.[17] To effectuate that policy, Congress provided, in Section 7, that employees shall have the right

> ". . . to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities . . ."

[17] 61 Stat. 136, 29 USCA, Sec. 141.

To safeguard such rights, Congress interdicted certain employer and union conduct and, in Section 8, legislatively defined such prohibited conduct as unfair labor practices. Specifically, in Section 8(b)(1)(A) of the Act, Congress declared that

> "It shall be an unfair labor practice for a labor organization or its agent—
>
> "(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 7 . . ."[18]

In the instant case, Laburnum premised its notice of motion upon allegations that defendants would not pemit Laburnum's employees to work unless they became UCW members (R. 2-12); and under the trial court's instructions to the jury, petitioners' liability was premised upon Hart's going to Laburnum's job site, while acting within the scope of his authority, with a disorderly crowd of men, for the purpose of organizing such employees and

> ". . . by intimidation, threats, acts of violence or coercion, said Hart and his crowd of men caused plaintiff's workmen to leave their job, and put them in such fear as to cause them to refuse to return to work thereafter."[19]

The Virginia Supreme Court, in its opinion (R. 1955; 75 S. E. 2d 702-703), stated that "There is ample evidence to support the finding that because of the insolent and abusive language and threats of Hart and those accompanying him, the Laburnum employees, who were greatly outnumbered, were intimidated and afraid to proceed with their work" and that " . . . there is ample evidence to support the finding that the plaintiff's employees refused to resume their work because of the threats and conduct of Hart and his associates."

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[18] 61 Stat. 140, amended 65 Stat. 601, 29 USCA, Section 158.

[19] Instruction 5-A (R. 132-133); see also Instructions 7 and 8 (R. 133-134) and footnote 10 herein.

In interpreting Section 8(b)(1)(A) of the Act, threats of violence have been found by the Board to be violative of such statutory provisions.[20] Concurrence therein by the federal judiciary appears in *Progressive Mine Workers of America* v. *National Labor Relations Board,* 7 Cir., 187 F. 2d 298 (1951); *N. L. R. B.* v. *United Construction Workers et al,* 4 Cir., 198 F. 2d 391, cert. den. 344 U.S. 876. The Board, in *H. N. Thayer Co.,* 30 LRRM 1184, 1185, proclaimed its "exclusive primary jurisdiction over all phases of the administration of the Act" including "regulatory power over the area of nonpeaceful means employed in labor controversies."

It is thus clear that the type of conduct found by the Virginia Supreme Court to have been carried out by petitioners is of the type over which the Board has exercised its jurisdiction because such conduct collided with the interdictions of Section 8(b)(1)(A).

C. Remedies and Procedures In The Act For The Prevention of Unfair Labor Practices Exclude State Court Jurisdiction To Hear and Determine The Issues in a Common Law Tort Action Based Upon Conduct Which Is Proscribed by Section 8(b)(1)(A). The Trial Court Was Without Power, Authority and Jurisdiction To Hear And Determine the Issues in This Action.

Petitioners submit that the National Labor Relations Board has exclusive jurisdiction over the type of conduct found by the Virginia Supreme Court to have been carried out by petitioners so as to preclude the State Court from hearing and determining the issues in the common law action in this case based upon such conduct.

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[20] *Conway's Express,* 87 NLRB 972; *Sunset Line and Twine Company,* 23 LRRM 1001. The National Labor Relations Board, in its Fifteenth Annual Report (1950), states (p. 127):

> "The question whether conduct amounts to unlawful restraint or coercion frequently arises in connection with strike activities. The types of conduct which were found to violate Sec. 8(b)(1)(A) included assaults and batteries on non-striking employees, stoning, clubbing, and attempting to overturn automobiles of non-strikers, threats of physical violence, and erecting barriers to plant entrances during picketing."

Article I, Section 8, Constitution of the United States, grants unto the federal Congress the power "To regulate Commerce . . . among the several states . . ." In *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, the United States Supreme Court stamped as constitutional the congressional enactment of what was commonly known as the Wagner Act (Act, July 5, 1935, c. 372, 49 Stat. 449 et seq.). In that case, the Court declared that acts which directly burden or obstruct interstate commerce, or its free flow, are within the reach of the congressional power; and this includes acts, having that effect, which grow out of labor disputes. In 1947, Congress enacted the Labor Management Relations Act, 1947.

To eliminate disruptions to commerce in the field of labor relations, Congress empowered the Board "to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce". Section 10(a). Redress by a private party against proscribed activity is by filing a charge with the Board which "sets in motion the machinery of an inquiry". *National Labor Relations Board* v. *Indiana & Michigan Electric Co.*, 318 U.S. 9, 18. In adopting the Act, Congress empowered the Board, in Section 10(j), upon issuance of a complaint, to seek injunctive relief in a federal district court. Under Section 10(c), the Board may issue its order requiring the charged party to cease and desist from the alleged unfair labor practice and to take such action as will effectuate the Act's policies, and, pursuant to Section 10(e), may petition a federal appellate court for a decree enforcing the Board's order. Under Section 10(f) "any person aggrieved by a Board's final order may effect appellate proceedings. That such authority for injunctive relief in federal district courts is exclusively for the Board, and not for private parties, has heretofore been judicially declared. *Amazon Cotton Mill Co.* v. *Textile Workers Union*, 4 Cir., 167 F. 2d 183. And only recently this court rejected an employer's assertion of

its right to resort to a state court for injunctive relief upon the employer's theory that it was an enforcement of state or local law. *Garner* v. *Teamsters, etc. Local Union,* U.S. , 98 L. ed. (Adv. Op., p. 161). As aptly stated by the Fourth Circuit in *Amazon Cotton Mill Co.* v. *Textile Workers Union, supra,* at 187:

> "Congress has worked out elaborate administrative machinery for dealing with the whole field of labor relationships, a matter requiring specialized skill and experience, and has provided for the handling of unfair labor practices by an administrative agency equipped for the task."

1. Congress Has Occupied The Field of The Type of Conduct Herein Involved and Foreclosed State Court Jurisdiction to Entertain a Common Law Tort Action for Damages Based Thereon.

Although the Court had proclaimed supremacy of federal legislation in the field of labor relations over a state regulatory agency prior to the enactment of the present Act (*Bethlehem Steel Co.* v. *N. Y. State Labor Relations Board,* 330 U. S. 767), it approved state condemnation by an administrative agency of a labor union's coercion and intimidation of employees as an unfair labor practice, because the state statute was not inconsistent with the then effective statute, referred to generally as the Wagner Act. In *Allen-Bradley Local* v. *Wisconsin Employment Relations Board,* 315 U.S. 740, the Court sustained state authority and reasoned that (p. 749)

> "Congress has not made such employee and union conduct as is involved in this case subject to regulation by the federal Board."[21]

Again, in *International Union* v. *Wisconsin Employment Relations Board,* 336 U.S. 245, exertion of state authority was justified because

> "There is no existing or possible conflict or overlapping between the authority of the Federal and State Boards,

[21] Also, at p. 750 the Court stated: " . . . the federal Act does not govern employee or union activity of the type here enjoined."

because the Federal Board has no authority either to investigate, approve or forbid the union conduct in question. This conduct is governable by the State or it is entirely ungoverned." (Emphasis supplied.)

But the lack of federal interest, which the Court utilized in grounding state jurisdiction in *Allen-Bradley* and *International Union* was supplied in the current Act and, as it relates to the instant case, in Section 8(b)(1)(A) thereof.

Since the Act's adoption in 1947, this Court has declared the supremacy of the federal Act over state law. *Plankinton Packing Co.* v. *Wisconsin Employment Relations Board*, 338 U.S. 953; *United Auto Workers* v. *O'Brien*, 339 U.S. 454; *Amalgamated Association* v. *Wisconsin Employment Board*, 340 U.S. 383. In *O'Brien* (at p. 457), state authority was rejected because of a conflict between the federal and state legislation and because "*Congress occupied this field and closed it to state regulation.*" (Emphasis supplied.) In *Amalgamated Association*, in explaining both *Plankinton* and *O'Brien*, the Court said (p. 390, footnote 12):

> "Plankington and O'Brien both show that states may not regulate in respect to rights guaranteed by Congress in Section 7."

While these cases dealt with the authority of state regulatory agencies, in *Garner* this Court agreed that the reasons for excluding state administrative bodies from assuming control of matters expressly placed within the competence of the federal Board also exclude state courts from like action".[22] In the case at bar, as in *Garner* and

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22 While some state courts have reached conclusions at variance with this latest expression of this Court, the decisions of *McNish* v. *American Brass Company et al.* 139 Conn. 44, 89 A. 2d 566, cert. denied, 344 U.S. 913; *Norris Grain Co.* v. *Nordaas*, 232 Minn. 91, 46 N.W. 2d 94 (1950); *Garner* v. *Teamsters, etc. Local Union No. 776*, 373 Pa. 19, 94 A. 2d 893, affirmed —— U.S. ——, 98 L. ed. (Adv. Op., p. 161); *Gerry of California* v. *Superior Court*, 32 Calif. 2d 119, 194 P. 2d 689, 696; *Ryan* v. *Simons*, 100 N.Y.S. 2d 18, affirmed 98 N.E. 2d 707, cert. denied, 342 U.S. 897; *Costaro* v. *Simons*, 302 N.Y. 318, 98 N.E. 2d 454 (motion for reargument denied, 100 N.E. 2d 39) are in accord. Federal courts, too, have professed the supremacy of the Act and the inapplicability of state law. *Pocahontas Terminal Corp.* v. *Portland Bldg., etc. Council*, 93 F. Supp. 217 (USDC, D. Maine); *Nash-Kelvinator Corp.* v. *Grand*

O'Brien, Congress has occupied the field of labor relations as to the conduct concerned herein "and closed it to state regulation".

2. Application of the Doctrine of Presumptive Exclusion, Required in This Case, Demonstrates That the State Court Was Without Power, Authority and Jurisdiction to Entertain the Instant Common-Law Tort Action. The Virginia Appellate Court Has Misinterpreted the Doctrine.

Heretofore where Congress has undertaken the regulation of interstate commerce and the federal statute has prohibited certain conduct, the consequences for infringements thereof have been regarded as federal questions, the answers to which are derivatives from the federal statute and policy, requiring that conflicting state law and policy must yield. *Sola Electric Co.* v. *Jefferson Electric Co.*, 317 U. S. 173, wherein (at p. 176) the Court stated that "the prohibition of a federal statute may not be set at naught, or its benefits denied, by state statutes or state common law rules". This principle of presumptive exclusion was first enunciated in *Houston* v. *Moore*, 5 Wheat. 1,[23]

Rapids Bldg., etc. Council, 30 LRRM 2466 (USDC, W. D., Mich., 1952, unreported in F. Supp.); *International Union of Operating Engineers* v. *Dahlem Construction Co.*, 6 Cir., 193 F. 2d 470, 475; *Schatte* v. *International Alliance, etc.*, 9 Cir., 182 F. 2d 158; *Capital Service, Inc.* v. *NLRB*, 9 Cir., 204 F. 2d 848, cert. granted, January 18, 1954; *NLRB* v. *International Union, UAW*, 7 Cir., 194 F. 2d 698, 702. Also, see *Born* v. *Cease*, 101 F. Supp. 473 (USDC, Alaska, 1951), wherein the federal district court dismissed an action for damages instituted by an employee-union member against a labor organization, seeking reinstatement in the union and damages for exclusion, because "Courts have not by the Act of 1947 been given concurrent jurisdiction" with the Board.

23 See *Houston* v. *Moore*, 5 Wheat. 1, 23, where Mr. Justice Washington, discussing the concurrency of federal and state law, observed that if the two ". . . correspond in every respect, then the latter is idle and inoperative; if they differ they must, in the nature of things oppose each other, so far as they do differ. If the one imposes a certain punishment for a certain offense, the presumption is, that this was deemed sufficient, and, under all circumstances, the only proper one. If the other legislature imposes a different punishment, in kind or degree, I am at a loss to conceive how they can both consist harmoniously together."

And, in *Charleston & W.C.R.R.* v. *Varnville Furniture Co.*, 237 U.S. 597, 604, Mr. Justice Holmes stated:

"When Congress has taken the particular subject matter in hand coincidence is as ineffective as opposition, and a state law is not to be declared a help because it attempts to go farther than Congress has seen fit to go."

See also *Missouri Pacific R. Co.* v. *Porter*, 273 U.S. 341, 346; *Oregon, etc. Co.* v. *Washington*, 270 U.S. 87, 101.

and since applied and reiterated in numerous cases, including the recent *Garner* case, *supra*, wherein (p. 170) Mr. Justice Jackson expresses the doctrine thus:

> "... when federal power constitutionally is exerted for the protection of public or private interests, or both, it becomes the supreme law of the land and cannot be curtailed, circumvented or extended by a state procedure merely because it will apply some doctrine of private right. To the extent that the private right may conflict with the public one, the former is superseded. To the extent that public interest is found to require official enforcement instead of private initiative, the latter will ordinarily be excluded. ..."

Petitioners submit that application of this doctrine to the instant case, which is required under the foregoing citations, demonstrates conclusively that the state court was without power, authority and jurisdiction to entertain the instant common-law tort action, because Congress has given exclusive primary authority concerning the subject matter thereof to the Board and has preempted the "field" as to the conduct concerned herein.

In rejecting petitioners' contentions against state jurisdiction in the instant case, the Virginia Supreme Court quoted from *Allen-Bradley* and *Kelly* v. *State of Washington*, 302 U.S. 1, 10 (R. 1949). These cases are inapposite, since in neither was there federal regulation of the subject matter involved in the respective cases. The quotation from *Allen-Bradley* (315 U.S. 749) that congressional intent must be clearly manifested must be read in full context with the succeeding sentence that "Congress has not made such employee and union conduct as is involved in this case subject to regulation by the federal Board". But Congress was not indifferent to the phase of labor relations covered by Section 8(b)(1)(A). As the Court professed in *Garner* (p. 164): "This is not an instance of injurious conduct which the National Labor Relations Board is without express power to prevent and which therefore either is 'governable by the State or it is entirely ungoverned' "; for, not only has such union conduct as this case concerns been made "subject to regulation by the fed-

eral Board" but there is express congressional recognition that "by the Labor Act Congress preempts the field that the act covers in so far as commerce within the meaning of the Act is concerned". House Report No. 245 on H. R. 3020; Legis. History of the LMRA, 1947, p. 335.

When it is considered that the "Act is a comprehensive code which governs the entire field of labor-management relations",[24] that the type of conduct upon which petitioners' liability is based has been made the subject of federal regulation, and that the historical background of such regulation, coupled with the fact that Congress, in the same statute, expressly provided the limits of state authority and specifically dealt with the subject of damage actions for the Act's violations,[24a] more appropriately applicable and required is the enunciation in *Bethlehem Steel Co.* v. *N. Y. State Labor Relations Board,* 330 U.S. 767, 772, that

> "It long has been the rule that exclusion of state action may be implied from the nature of the legislation and the subject matter although express declaration of such result is wanting."

The Virginia appellate court's further attempted justification for upholding the state court's jurisdiction, power and authority in the instant case is that Laburnum's action for damages was "for a completed common-law tort for which admittedly the Act affords no redress" (R. 1948). Since, as petitioners have shown, the activities herein involved are in the field of labor relations, substantive rights and procedures derived under state laws are superseded and "Whatever Congress determines, either as to a regulation or the liability for its infringement, is exclusive of state authority." *Sherlock* v. *Alling,* 93 U.S. 99, 104.[25]

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[24] Ratner, Federal-State Jurisdiction, New York University Fifth Annual Conference on Labor, 77, 86.

[24a] Discussions of these matters appear herein, *post* pp. 40-47.

[25] See *N. Y. C. & Hudson R. R. Co.* v. *Tonsellito,* 244 U. S. 360; *Pennsylvania R. R. Co.* v. *Public Service Commission,* 250 U. S. 566, 569, wherein it is stated that "when the United States has exercised its exclusive powers over interstate commerce so far as to take possession of the field, the States no more can supplement its requirements than they can annul them"; and

While it is true the Act did not afford Laburnum a remedy by which it could have obtained a money damage award, contrary to the Virginia Supreme Court's conclusion that the Act afforded Laburnum no redress, Congress did accord Laburnum redress under the procedures and remedies set forth in the Act. If such procedures and remedies are inadequate, the remedy lies within the legislative province. As the Court observed in *Garner* (p. 170):

> "... Of course, Congress, in enacting such legislation as we have here, can save alternative or supplemental state remedies by express terms, or by some clear implication, if it sees fit. ..."

3. Both the Legislative History of Section 8(b)(1)(A) and Other Provisions of the Act Show Congressional Intent to Foreclose State Authority Over a Common-Law Tort Action Instituted by a Private Party.

Although in *Garner* (p. 164) Mr. Justice Jackson, speaking for the Court, observed that *Garner's* involvement was not "a case of mass picketing, threatening of employees, obstructing streets and highways, or picketing homes", both in the legislative history of Section 8(b)(1)(A) and in the other provision of the Act are legislative indicants that the conclusions reached and applied in *Garner* are applicable to the instant case and that Congress foreclosed the rights of state courts, at the instance and upon complaint of a private party, to hear and determine the issues in a common-law tort action for damages based upon the type of conduct for which the Virginia appellate court has held the petitioners liable.

Frazier v. *Hines* (USDC, E.D., So. Carolina), 260 F. 874, 880, wherein it was held that "The rule is that, if the facts appear to bring the case under the act, the statute is exclusive ... and ... no recovery can be had as in common law".

A. The Legislative History of Section 8(b)(1)(A) Manifests A Clear Intent To Preclude State Court Jurisdiction Of Common Law Tort Actions Based Upon Conduct Involved Herein.

The Hartley Bill (H.R. 3020, 80th Congress, 1st Session), as introduced and adopted by the House of Representatives, specifically made the type of conduct involved herein "unlawful concerted activities" and provided, not only for injunctive relief by private persons, but also for damage actions by "Any person injured in his business, person or property by an unlawful concerted activity" in any federal district court "having jurisdiction of the parties".[26] These provisions were deleted from H.R. 3020 in the Senate and such deletions were agreed to by the Managers on the Part of the House in the Conference Report on H.R.

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[26] H.R. 3020, as enacted by the House, provided in Section 12 as follows:

"'UNLAWFUL CONCERTED ACTIVITIES

"'Sec. 12. (a) The following activities, when affecting commerce, shall be unlawful concerted activities:

"'(1) By the use of force or violence or threats thereof, preventing or attempting to prevent any individual from quitting or continuing in the employment of, or from accepting or refusing employment by, any employer; or by the use of force, violence, physical obstruction, or threats thereof, preventing or attempting to prevent any individual from freely going from any place and entering upon an employer's premises, or from freely leaving an employer's premises and going to any other place; * * *

"'(b) Any person injured in his business, person, or property by an unlawful concerted activity affecting commerce may sue the person or persons responsible therefor in any district court of the United States having jurisdiction of the parties, without regard to the amount in controversy, and may recover the damages sustained by him as a result of such unlawful concerted activity, together with the costs of the suit, including a reasonable attorney's fee.

"'(c) No provision of the Act of March 23, 1932, entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", shall have any application in any action or proceeding in a court of the United States involving any activity defined in this section as unlawful.'" Legislative History of the Labor Management Relations Act, 1947 (U. S. Gov't. Printing Office, 1948), pp. 204-207. House Report No. 245 on H.R. 3020 explained that the bill "accomplishes . . . (14) For unlawful concerted activities it gives the person injured thereby a right to sue civilly any person responsible therefor." Ibid., 292, 296-297.

3020.[27] Such deletions sharply deny that Congress intended that an infringement of Section 8(b)(1)(A) was to ground an action sounding in money damages; and while said Section 12 contemplated permissive actions in the federal courts, it is clearly unreasonable to assume or imply that Congress, rejecting damage actions in federal tribunals, intended that violators of proscribed unfair labor conduct would be responsive therefor in damage actions in state courts ~~intended such a result~~.

In the House debates concerning preservation of state authority on union-security agreements, it was suggested that the provision be broadened so as to have it read, "Nothing in this Act shall be construed to invalidate any State law or constitutional provision" but Congressman Case of South Dakota replied that to do so "might nullify much of the bill, because you would establish State rights to deal with all phases of industrial relations in spite of any provisions whatsoever in the Act." (93 Cong. Record, p. 3559)

The Act's legislative history poignantly reveals a congressional intent that civil procedures for the commission of acts proscribed under Section 8(b)(1)(A) were to be found exclusively in the Act.

The Act's legislative history reveals vigorous opposition to Congress' adoption of Section 8(b)(1)(A), because, as it was argued, it was wholly unnecessary. In the debates, Senator Ives' argument was that "assuming that these proscribed acts involve violence and physical coercion, the provision is unnecessary, because offenses of this type are punishable *under State and local police laws*".[28] "For such

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[27] Ibid., pp. 226-291. The House Conference Report on H.R. 3020 justified the deletion of Section 12 on the ground, *inter alia*, that "the declaration of policy" in the Act dealt with the problem in general terms and provided that the "elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed". An additional reason given was that under Section 10(k), the Board "is given authority to apply to the district courts for temporary injunctions restraining alleged unfair labor practices temporarily". Ibid., pp. 543, 563.

[28] Legislative History of the LRMA, 1947, p. 1021. Emphasis supplied. See also Ibid., p. 1579, where identical language appears in an Analysis of the Act introduced into the Congressional Record by Senator Murray.

things as 'goon' squads, the only answer *is immediate and decisive police action,*" stated Senator Ives, who argued against federal intervention in "matters of that kind which are strictly *police matters*".[29] In urging the adoption of Section 8(b)(1)(A) in the Act, Senator Taft avowed that "we feel that the Board should be given the opportunity to say, 'That is an unfair labor practice and you must stop that particular practice.' "[30] In the colloquy between Senators Taft and Pepper, the latter observed that "The Senator did not say that the men were threatened physically. If they were, they had a right to resort to *police protection* in their own State or city." And, again, "Of course, I am not condoning what those men did; but I point out that that case either comes under the category of one in which the workers can be protected within their own organization, or it comes under the category of one in which the workers can be protected by *police action.*"[31] (Italics supplied)

In opposing the inclusion of the provisions now found in Section 8(b)(1)(A), Senator Morse argued that—

> "The Senator from Minnesota mentioned the case of a small employer in New York whose employees had been pushed around and threatened by a so-called goon squad in an effort to force them to join the union. Such practices, of course, are not to be condoned, and the junior Senator from Oregon condemns them. *It would be much more effective, however, if the local police were called in to correct such a situation, rather than to make it possible for the employer or the employees to bring unfair labor practice charges before the NLRB in connection with disputes of that type.*"[32] (Italics supplied)

No suggestion appears in the debates by either proponents or opponents that a violation of Section 8(b)(1)(A) or the

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[29] Ibid., p. 1024.
[30] Ibid., p. 1028.
[31] Ibid., p. 1029.
[32] Ibid., p. 1194.

commission of conduct interdicted by that Section could serve as a basis for a common-law tort action in a state court. In proposing that the Senate make of such conduct an unfair labor practice, Senator Taft observed that a wrongdoer should be subject to "two remedies".[33] Clearly, Senator Taft had reference to the Board's administrative process and the state and local criminal process. The debates record Senator Taft's ready admission that the unfair labor practice provisions "might duplicate to some extent that State law" but he was assertive that violation of such provisions "may involve some violation of State law respecting *violence which may be criminal,* and so to some extent the measure may be duplicating the remedy existing under state law".[34] Senator Ball, a proponent, made it clear that court action by private parties was not intended or, at the time, desirable. Urging adoption of the administrative process, Senator Ball agreed that *"the main remedy"* for union coercion *"is prosecution under State law and better local law enforcement"*,[35] but commented that

> "With this administrative-law approach I hope that sometime we shall reach the stage in our labor relations when we can abolish the NLRB completely and write the rights, duties, and responsibilities of employers and employees into the law to permit anyone to go freely *into court* to protect his rights . . ."[36] (Italics supplied)

These debates emphasize that Congress, dealing specifically with the type of conduct for which the Virginia appellate court has found petitioners responsible, sought, not only to bring such activity within the ambit of Board jurisdiction, power and regulation under Section 10(a) of the Act, but to make such jurisdiction exclusive, except

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[33] Ibid., p. 1031.
[34] Ibid., p. 1208.
[35] Ibid., p. 1199.
[36] Ibid., p. 1201.

in so far as such conduct was in violation of state criminal law for which violators might also be prosecuted under state criminal procedures for infractions of state criminal law.[37] The instant case, of course, is not a prosecution by a sovereign state for an offense against the public but an action by an employer for a money judgment based upon acts which a state appellate court has found to have been committed and which are unfair labor practices under Section 8(b)(1)(A) of the Act. If to the Board remedy and to the state criminal process there is added a state common-law tort action, then contrary to Senator Taft's argument that a wrongdoer should be subject to "two remedies", it is submitted that three remedies would then be available against a labor organization, a result wholly at variance with the intent of the proponents of the Act and particularly Section 8(b)(1)(A).

B. The Act Specifically Provides For Damage Actions Which Congress Regarded As Permissive; And Such Provisions Manifest Clear Congressional Intent To Exclude And Prohibit All Other Actions For Damages.

Congress was vocal concerning damage actions it deemed permissible for conduct interdicted by the Act's provisions; and it was specific in its designation of the courts in which damage actions were to be prosecuted. For violation of collective bargaining contracts between an employer and a labor organization, in Section 301(a) Congress authorized actions to be brought by either party in any district court having jurisdiction of the parties. Boycotts and other combinations were made unlawful in Section 303(a); and in subsection (b), Congress declared that

> "Whoever shall be injured in his business or property by reason of any violation of subsection (a) of

[37] This is consonant with the language in *NLRB* v. *International Rice Milling Co.*, 341 U.S. 665, 672, that to reach alleged violence "the complaint more properly would have relied upon Section 8(b)(1)(A) or would have addressed itself to local authorities."

> this section may sue therefor in any district court of the United States . . . *or in any other court having jurisdiction of the parties,* and shall recover the damages by him sustained . . . " (Italics supplied.)

These statutory provisions bespeak congressional intent to limit an employer's right to sue for damages to those situations made actionable by Sections 301 and 303 and to limit jurisdiction therefor to those courts which Congress specifically designated therein. "*Expressio unius est exclusio alterius*" is especially applicable in the construction of federal statutes. *United States* v. *Barnes,* 222 U.S. 513.

C. The Act Itself Denotes The Limitations Of The Area Of State Authority.

In *Amalgamated Association* v. *Wisconsin Employment Relations Board,* 340 U.S. 383, 397-398, this Court avowed that "Congress knew full well that its labor legislation 'preempts the field that the Act covers in so far as commerce within the meaning of the Act is concerned' *and demonstrated its ability to spell out with particularity those areas in which it desired state regulation to be operative.*" (Italics supplied) The Court stated further (p. 397):

> "When it amended the Federal Act in 1947, Congress was not only cognizant of the policy questions that have been argued before us in these cases, but it was also well aware of the problems in balancing state-federal relationships which its 1935 legislation had raised. The legislative history of the 1947 Act refers to the decision of this Court in Bethlehem Steel Co. v. New York State Labor Relations Board, 330 U. S. 767. . . ."

It pointed out[38] that, in addition to Section 10(a) which permits the Board by agreement with a state agency to

[38] 340 U.S. 398, footnote 25.

cede jurisdiction in any industry[39] that "congressional direction as to the role that states were to play in the area of labor regulation covered by the Federal Act" was embodied in other sections of the Act. In Section 14(b), the Act's provisions concerning union-security agreements were subordinated to state law when such law permitted prohibited their execution or application. The Director of Federal Mediation and Conciliation Service is authorized to establish procedures for cooperation "with State and local mediation agencies". Section 202(c), 29 USCA, Section 172(c). The Director and the Service are directed to avoid the mediation of disputes having a minor effect on interstate commerce "if State or other conciliation services are available to the parties." Section 203(b), 29 USCA, Section 173(b).

These express reservations of power to the states to act in certain areas in the field of labor relations not only establish positive limitations of state authority beyond which the states may not go in dealing with labor relations but also establish the congressional intention that Congress went as far as it deemed it should in reserving such limited power, authority and jurisdiction to the states.

Having thus demonstrated (1) that by enacting Section 8(b)(1)(A) Congress has occupied the field in labor relations concerning the activities condemned by the Virginia courts in this case, and (2) that the legislative history, as well as the statutory sections which permit damage actions of certain kinds to be brought, and define the limits of congressional reservation of state power in the field of labor relations, show that Congress did not intend that private parties could process a common-law tort action for damages in a state court, it follows that it is appropriate to say, as this Court did in *Garner* (p. 170): "On the basis of the allegations," and upon the conduct found by the Virginia Supreme Court to have been carried out by

[39] Excepted industries are "mining, manufacturing, communications, and transportation except where predominantly local in character."

petitioners, "[Laburnum] could have presented this grievance to the National Labor Relations Board. The [petitioners] were subject to being summoned before that body to justify their conduct. We think the grievance was not subject to litigation in the tribunals of the State."

The foregoing discussion of the Act's provisions concerning damage actions and congressional limitations of state power conclusively demonstrates that the Virginia Supreme Court erroneously held (R. 1949-1950) that "there are no words" in the Act which indicate that the remedy provided in the Act "is exclusive, or that the Act was designed to deprive an employer or his employees of the common law rights of action in a state court for acts of violence and intimidation which may constitute unfair labor practices." The Virginia Supreme Court was in error when it concluded that, as to the instant common law tort action, the Act "was not the only redress open to" Laburnum. (R. 1948)

D. The Virginia Supreme Court Misconceived the Basis of Laburnum's Action. It Misinterpreted the Act.

The Virginia court declared that Laburnum "did not seek relief because the acts of the defendants' agents were unfair labor practices, nor is its present case predicated upon the Act. It sought damages for a completed common law tort for which admittedly the Act affords no redress." (R. 1948)

If, as petitioners urge and, we believe, have conclusively shown, the subject activity herein falls within the purview of condemned conduct under Section 8(b)(1)(A), it is of no legal efficacy, and the test of the state court's power, authority and jurisdiction is not to be found, in the characterization or appellation which either Laburnum or the Virginia appellate court gives to its action. Failure or omission to denominate activity as unfair labor practices

eo nomine did not deter the court in *Born* v. *Cease*[40] or the New York state court in *Ryan* v. *Simons*[41] from judicially characterizing conduct in common law actions as unfair labor practices and within the Board's exclusive jurisdiction. Moreover, state court jurisdiction is not to be determined upon whether the claim is based upon state law, but the test is whether the matter involved lies within the "field" as occupied by Congress. If Congress has occupied it to the exclusion of state jurisdiction, then the federal Act supersedes all substantive rights and remedies flowing from state authority. *Garner* v. *Union, supra,* p. 170.

In the Virginia appellate court, Laburnum contended that Section 10(a) did not preclude a state court from determining whether an employer's private right had been infringed, and the court's conclusions and holdings that the Act did not deprive state courts "of their traditional power and jurisdiction to deal with unlawful conduct committed within their respective territorial limits during the course of a labor dispute which may affect interstate commerce" as concerns this case, and that Laburnum sought damages "for a completed common law tort for which admittedly the Act affords no redress" (R. 1948-1949) obviously were merely expressive of Laburnum's contentions. But, this court, in *Garner,* rendered untenable Laburnum's private rights theory and such conclusions and holdings when it concluded that (p. 170):

> "* * * when federal power constitutionally is exerted for the protection of public or private interests, or both, it becomes the supreme law of the land and cannot be curtailed, circumvented or extended by a state procedure merely because it will apply some doctrine of private right. To the extent that the private

[40] 101 F. Supp. 473 (U.S.D.C., Alaska, 1951), wherein the federal district court dismissed an action for damages instituted by an employee-union member against a labor organization seeking reinstatement in the union and damages for exclusion.

[41] 100 N.Y.S. 2d 18 (1950) affirmed 98 N.E. 2d 707, cert. den., 342 U.S. 897, involving an action to restrain a labor union and an employer from discriminating against plaintiff employees because of their non-membership in the union, brought upon the theory that the union had breached the common law duty of agent to principal by entering into a union-shop agreement with the employer.

> right may conflict with the public one, the former is superseded. To the extent that public interest is found to require official enforcement instead of private initiative, the latter will ordinarily be excluded."

In sustaining the state court's power, authority and jurisdiction in this case, the Virginia appellate court averred that "exercise by the state of its jurisdiction in enforcing such cause of action" neither conflicted with the Act's provisions nor impinged upon the rights thereby protected. (R. 1950) We shall discuss these *seriatim* to demonstrate the fallacy in the court's conclusions.

Initially, it is readily apparent that there is definitive conflict with the Act's provisions and the exercise of the state's jurisdiction. "The conflict lies in remedies, not rights," stated this Court in *Garner* (p. 169), and "when two separate remedies are brought to bear on the same activity, a conflict is imminent." Under such juridical test of the supremacy of federal jurisdiction, a judgment by a state court for conduct forbidden by the Act predicated upon a jury verdict is at total variance with the Act's remedy of a cease-and-desist order, enforced by federal appellate courts, and "conflict is imminent."

Furthermore, it is fallacious to reason that the exercise of state jurisdiction did not impinge upon rights protected by the Act. The activity for which the Virginia jury found petitioners responsible was to obtain from Laburnum for its unorganized laborer employees union recognition and higher wages and occurred in Kentucky where the Court of Appeals had given its imprimatur to the principle that union activities designed to promote legitimate interests of employees, where the means employed are not unlawful, could not be barred. *Blanford* v. *Press Publishing Co.*, 286 Ky. 657, 151 S.W. 2d 440. Likewise such activity under the Act is protected activity and the prohibitive language of Section 8(b)(1)(A) is activated when it is alleged that the *means* used collide with the statutory provisions of Section 7 and fall within the purview of conduct made and

unfair labor practice under Section 8(b)(1)(A) of the Act. It will be recalled that the issue determined was whether the men refused to return to work solely because of the existence of a peaceful picket line or because of the wrongful conduct of Hart and the men with him. The jury found against petitioners' contentions; but such factual determination was one which the Congress had entrusted to the Board as an administrative agency possessing specialized skill and experience. Under the Act petitioners had the right to have this disputed issue determined by the federal Board and courts pursuant to the remedies and procedures delineated in the Act.[42] Whether the Board would have agreed with the Virginia jury and its courts is immaterial. "There is no indication that the statute left it open for such conflicts to arise." *Garner v. Teamsters', etc., Union, supra*, p. 170. The Board itself has asserted "that its jurisdiction is exclusive in all matters which the Act entrusts to it." Seventeenth Annual Report of the NLRB (1952), p. 21. In *H. N. Thayer Company*, 30 LRRM 1184, 1185, the Board, proclaiming its exclusive jurisdiction in a case which involved a Section 8(b)(1)(A) charge, said that the "Board is not bound by a decision as to the objectives of a strike which the state court had no power to make. Nor is it bound by that court's ruling *respecting the character of the means. The Act vests the Board with exclusive* primary jurisdiction over all phases of the administration of the Act . . ." (Italics supplied)

E. The Consequences of Sustaining the Virginia Supreme Court's Theory of Concurrent Jurisdiction.

The Court will recall that the activity which gave rise to the instant case occurred in Kentucky and the jury which rendered the verdict was a special one called by the

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[42] In urging the adoption of Section 8(b)(1), Senator Taft referring to union unfair labor practices, remarked: "We feel that the Board should be given the opportunity to say, 'That is an unfair labor practice and you must stop that particular practice.' " (Legis. History of the LMRA, 1947, p. 1028.)

Virginia trial court. (Tr. .....) Furthermore, and pertinently, Laburnum made no effort to process its complaint with the federal Board. It ignored the "peaceful procedures" provided by Congress in the Act's Section 10 "for preventing" any alleged interference by petitioners "with the legitimate rights of" Laburnum "in order to promote the full flow of commerce."[43] Laburnum's president Bryan admitted that he told both Hart and David Hunter, a UCW Regional Director, that he expected to hold the "United Mine Workers responsible for what happened." (R. 609, 562) Obviously—and contray to Congress' will, purpose and policy expressed in the Act—Laburnum kept its eye windward to the potentialities of a jury damage award. It permitted those potentialities to be the paramount factor rather than to seek the avoidance of any disruption to commerce through the procedures which Congress made available to it. Laburnum was dollar-conscious rather than relief-conscious as Congress, in adopting the Act, had mandated. Unlike Laburnum, Congress was interested in the public welfare and interest. Unlike Laburnum, Congress placed no dollar mark upon its plan of relief when the free flow of commerce was obstructed. But the Virginia Supreme Court's decision, if permitted to stand, would effectuate a result by which the entire congressional scheme and policy of protecting interstate commerce from industrial strife and obstruction would be completely frustrated and thwarted. If, instead of being required to utilize the procedures provided in the Act, a plaintiff is enabled to resort to a common-law tort action in a state court for damages, then the "elaborate administrative machinery for dealing with the whole field of labor relationships, a matter requiring specialized skill and experience . . . by an administrative agency equipped for the task" (*Amazon Cotton Mill Co.* v. *Textile Workers Union, supra*) would be rendered abortive and the federal statutory scheme sup-

[43] 29 U.S.C.A. Section 141.

planted by jury determinations. The congressional purpose of vindicating public rights would be subordinated to private rights—a doctrine rejected in the *Garner* case, *supra*, and the congressional intent "to dispel the confusion resulting from dispersion of authority and to establish a single paramount administrative or quasi-judicial authority in connection with the development of the Federal American law regarding collective bargaining"[44] would be rejected. It would be inconsonant with and contrary to this Court's pronouncements in the *Garner* case, supra, at page 165, that "Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure . . . Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies."

CONCLUSION

For the foregoing reasons, petitioners submit that:

In view of the type of conduct found by the Virginia Supreme Court to have been carried out by petitioners, the Board has exclusive jurisdiction over the subject matter so as to preclude the State court from hearing and determining the issues in this case based upon such conduct. The Virginia Supreme Court was in error in sustaining the State trial court's jurisdiction. The federal Act preempts the field as to the conduct involved in the instant case; it expressly covers the subject matter; it prescribes the rights of the parties; and it provides for the promulgation of all procedures requisite to the enforcement of ade-

[44] Senate Rep. No. 573, 74th Cong., 1st Sess., p. 15, quoted by the court in *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U.S. 261, 267.

quate remedies for the proscribed conduct. Because of such legislation, the proceeding in the state court was superseded by federal law. Article VI of the Constitution of the United States provides, in part, that "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

The Virginia Appellate Court erred in holding that petitioners' motion to dismiss Laburnum's notice of motion for judgment and to enter a final judgment for petitioners on the ground that the trial court was without power, authority and jurisdiction to hear and determine the issues in said action "was properly overruled" (R. 1950) and in affirming the judgment of the trial court to the extent of $129,326.09, with interest at 6% per annum from February 16, 1951, until paid, and for costs expended by Laburnum "about the prosecution of its notice of motion for judgment in said circuit court" and ordering that Laburnum recover of petitioners its costs by it expended "about the prosecution of the writ of error and supersedeas" in said Virginia Supreme Court, as well as in failing and refusing to reverse, set aside and hold void the judgment of said Circuit Court of July 5, 1951, for $275,437.19, with interest and costs, in its entirety, and to set aside the jury verdict and enter judgment for petitioners, and each of them.

It erred, too, in failing and refusing to find, hold and conclude that the provisions of the Act were applicable to the facts of the instant case, and that (1) the Act provides exclusive remedies and procedures for conduct proscribed by Section 8 (b) (1) (A) thereof; (2) the Act deprives an employer of his common-law right of action in a state court for damages based upon such conduct; (3) by reason of the provisions of said Act, the Circuit Court of the City of Richmond, Virginia, was without power, authority and jurisdiction to hear and determine the issues in the in-

stant case and to enter its said judgment of July 5, 1951, against petitioners, and each of them, and such judgment is void; and (4) judgment should have been entered for petitioners, and each of them, and Laburnum's notice of motion dismissed.

This Court should reverse the judgment of the Virginia Supreme Court of April 20, 1953, herein complained of in affirming the trial court's judgment as aforesaid and ordering that Laburnum recover of petitioners its costs by it expended "about the prosecution of the writ of error and supersedeas" in said Virginia Supreme Court and, by appropriate order, set aside such judgments and hold them for naught and direct (1) the dismissal of Laburnum's notice of motion, and (2) entry of judgment for petitioners and each of them.

Respectfully submitted,

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March 15, 1954.

APPENDIX A

Constitution of the United States Article 1, Section 8:
The Congress shall have power * * *
To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

Labor Management Relations Act, 1947 (Act of June 23, 1947, c. 120, 61 Stat. 136 et seq.):

SEC. 1 *Short title: Congressional declaration of purpose and policy.*

(a) This Act may be cited as the "Labor Management Relations Act, 1947".

(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and prescribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in con-

nection with labor disputes affecting commerce. (61 Stat. 136; 29 USCA, Section 141).

Title I

Amendment of National Labor Relations Act

SEC. 101. The National Labor Relations Act is hereby amended as follows:

FINDINGS AND POLICIES

Section 1. * * *

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries. * * *

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of ne-

gotiating the terms and conditions of their employment or other mutual aid or protection. * * * (61 Stat 136; 29 USCA, Section 151).

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, labor organizations * * *

* * * * * * * * * *

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined. (61 Stat. 137; 29 USCA, Section 152).

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from

any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3). (29 USCA, Section 157; 661 Stat. 140).

UNFAIR LABOR PRACTICES

SECTION 8.

* * * * * * * * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; * * * (61 Stat. 140, USCA, Section 158(b))

SEC. 10. *Prevention of unfair labor practices—Powers of Board generally*

(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: * * *

(c) The testimony taken by such member, agent, or agency of the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this subchapter: * * *

* * * * * * * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the United States courts of appeals to which applications may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of

the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency shall be considered by the Court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. * * * The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification * * *

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such a court a written petition praying that the order of the Board be modified or set aside.* * * Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree

enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

(j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) of this section charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

* * * * * * * * * *

(1) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 158 (b) of this title, the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief

pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: * * *

(29 USCA, Sec. 160(a), (b), (c), (e), (f), (j), (l); 61 Stat. 146; June 25, 1948, c. 648, Sec. 32, 62 Stat. 991, eff. Sept. 1, 1948.)

* * * * * * * * * *

SEC. 14(b):

Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law. (29 U.S.C.A., Sec. 164 (b), 61 Stat. 151 (b))

Title II

SEC. 202. (c) * * * The Director may establish suitable procedures for cooperation with State and local mediation agencies. * * * (61 Stat. 153, amended Oct. 15, 1949, c. 695, Sec. 4, 63 Stat. 880; 29 USCA Sec. 172(c))

* * * * *

SEC. 203. (b) The Service may proffer its services in any labor dispute in any industry affecting commerce, either upon its own motion or upon the request of one or more of the parties to the dispute, whenever in its judgment such dispute threatens to cause a substantial interruption of commerce. The Director and the Service are directed to avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other conciliation services are available to the parties. Whenever the Service does proffer its services in any dispute, it shall be the duty of the Service promptly to put itself in com-

munication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement. (61 Stat. 153; 29 USCA Sec. 173(b))

Title III

SEC. 301. *Suits by and against labor organizations—Venue, amount, and citizenship*

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties. (61 Stat. 156; 29 USCA, Sec. 185).

SEC. 303. *Boycotts and other unlawful combinations right to sue; jurisdiction; limitation; damages*

(a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the repre-

sentative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 of the National Labor Relations Act;

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under the National Labor Relations Act.

(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) of this section may sue therefor in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit. (61 Stat. 158; 29 USCA, Sec. 187).

Title V

Definitions

SEC. 501. When used in this chapter—

(1) The term "industry affecting commerce" means any industry or activity in commerce or in which a labor dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce. (61 Stat. 161; 29 USCA, Section 142).

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